

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this court's Local Rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 19th day of November, two thousand twelve.

PRESENT:

PIERRE N. LEVAL,
JOSÉ A. CABRANES,
ROBERT D. SACK,
Circuit Judges.

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UNITED STATES OF AMERICA,

Appellee,

-v.-

No. 11-1854-cr

CHRISTOPHER MOORE,

Appellant,

DANIEL GLADDEN, also known as RAZ, also known as RAZ
GLADDEN, also known as NOODLES GLADDEN, also known as
NOODLES,

*Defendant.**

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FOR APPELLANT:

Christopher Moore, *pro se*, Jonesville, VA.

* The Clerk of Court is directed to amend the official caption in this case to conform to the listing of the parties above.

FOR APPELLEE:

Amy Busa, Matthew S. Amatruda, Assistant United States Attorneys, of Counsel, *for* Loretta E. Lynch, United States Attorney, Eastern District of New York, Brooklyn, NY.

Appeal from the April 18, 2011 order of the United States District Court for the Eastern District of New York (Nicholas G. Garaufis, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the April 18, 2011 order of the District Court be **AFFIRMED**.

Appellant Christopher Moore, proceeding *pro se*, appeals from the District Court's April 18, 2011 post-judgment order (1) construing certain papers that he filed as a motion for reconsideration of its February 26, 2009 ruling on his motion to modify his sentence pursuant to 18 U.S.C. § 3582(c)(2); and (2) denying the motion as construed. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

First, the District Court correctly determined that the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372, cannot be used to reduce the sentences of defendants, like Moore, who were sentenced prior to the Act's August 2010 effective date, *see United States v. Diaz*, 627 F.3d 930, 931 (2d Cir. 2010) (*per curiam*). Second, Moore's arguments that (1) his sentence is unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and (2) the evidence at trial established that the substance involved in his offense was powder cocaine, rather than crack cocaine, are beyond the proper scope of the current appeal. The Supreme Court has made it abundantly clear that "§ 3582(c)(2) does not authorize a sentencing or resentencing proceeding" and only grants courts the power to reduce a sentence in specific circumstances not before us. *Dillon v. United States*, 130 S. Ct. 2683, 2690 (2010). For these reasons, we find no merit to Moore's appeal.

We have reviewed the record and the parties' arguments on appeal, and we **AFFIRM** the April 18, 2011 order of the District Court.

FOR THE COURT,
Catherine O'Hagan Wolfe, Clerk of Court